

# United States District Court Southern District of Texas

Case Number: H-04-2387

## ATTACHMENT

Description:

☐ State Court Record ☐ State Court Record Continued

☐ Administrative Record

☐ Document continued - Part II of IV

☐ Exhibit(s) number(s) / letter(s) Exh # 103

Other: Pltf's First Amended Pet. Habeas Corpus

---

---

1 of the people that had been threatening him. When he refused  
2 it, he was -- he was gassed. There was OC used against him with  
3 a forced cell extraction. And he subsequently was placed in  
4 solitary, where they wanted him to move again back to the same  
5 part of the wing that he had been threatened in before. He was  
6 gassed to move him out of solitary, back to general population.  
7 And he was at that time being -- the intent was to move him into  
8 closed custody rather than medium, which subsequently did  
9 happen. As he was moved into the cell, the cell mate and the  
10 inmate next door to him saw, apparently, the vulnerability of  
11 this young man. The man next door to him raped him literally  
12 within an hour after he had been placed forcefully in the cell.  
13 And that night, the cell mate, the other closed custody inmate,  
14 raped him, also.

15       He subsequently began a long cycle of requesting  
16 protection, being denied it, and then refusing housing moves,  
17 and he has several disciplinary cases that relate to his refusal  
18 to accept housing, and ends up spending a great deal of time in

19 solitary confinement, as a result of that, losing what little  
20 good time he had already earned, and is shown -- I might add  
21 that the medical records back up claims that he's made as to the  
22 dates and extent of the injuries that he suggests that he --  
23 that he had.

24 In August of '96, he again requested safekeeping or  
25 protection. And a lieutenant wrote, suggesting that that -- to

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 the UCC, suggesting it be followed. The Unit Classification  
2 Committee denied the safekeeping again. He subsequently picked  
3 up some more cases for refusing housing. Again was placed in  
4 solitary. Again refused to leave solitary and ended up spending  
5 roughly 90 days in solitary as a result of those refusals.

6 Then subsequently was taken out on a bench warrant for  
7 his own protection, requested to go to PAMIO. By this time, he  
8 had been described as being an angry, assaultive individual. In  
9 reviewing the record, it's quite obvious that he does refuse to  
10 move into housing that he considers unsafe, but other than that,  
11 does not seem to be an assaultive individual. He was refused  
12 the option to go to PAMIO, and subsequently -- the story just  
13 continues on. And he eventually was placed in administrative  
14 segregation, which then, of course, did afford him the kind of  
15 protection that he wanted.

16 Q. Well, let me take you some -- through some of this. Would  
17 you first tell the Court what PAMIO is?

18 A. PAMIO is a program that TDCJ has established --

19 THE COURT: How do you spell that?

20 THE WITNESS: It's P-A-M-I, zero, or O. I'm not sure

21 that I recall, but it's for mentally ill offenders, for those

22 that have been described by the medical department of TDCJ as

23 needing treatment for their mental illness.

24 MS. SALITERMAN: If I may approach again, Your Honor?

25 THE COURT: You may.

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 BY MS. SALITERMAN:

2 Q. I'd like to show you Plaintiffs' Exhibits 554 and 555,  
3 which are some of the TDC records on Inmate M. Are those some  
4 of the records you reviewed in addition to interviewing -- on  
5 which you presented your information about him today?

6 A. They are.

7 Q. Now, you said there was a forced cell extraction using gas.  
8 From what -- from where was he extracted? Is this the cell they  
9 wanted to move him out of?

10 A. He was -- he, as I recall, was extracted from the isolation  
11 cell. He was serving isolation time, punitive segregation time,  
12 if you will. And when told that he was to be moved back to the  
13 same area that he had been -- that he had left, refused. And  
14 they used a cell extraction, moved him back into a closed  
15 custody cell at that point in time, where he subsequently was  
16 raped both by his cell partner, as well as a neighbor.

17 Q. So they gassed him to get him out of the isolation cell,  
18 and then took him to the closed custody cell in which he was

19 supposed to be housed?

20 A. That is correct.

21 Q. Did you understand he resisted going into the closed

22 custody cell?

23 A. That's my understanding, yes.

24 Q. But he was made to go into that cell?

25 A. He was made to go in the cell. And as I recall, he

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 described that he was crying at the time because of being forced  
2 in there, and that the -- both the cell partner as well as the  
3 neighbor saw the weakness of this, of him and how vulnerable he  
4 was at that point in time, and subsequently was raped by each.

5 Q. And do you have an opinion as to what the TDC officials  
6 that were putting him in that cell understood at the time as  
7 they were putting him in the cell?

8 A. Well, I don't know what they were thinking at the time. I  
9 do believe, though, that for an individual that displays both  
10 the physical characteristics of this individual, the fact he  
11 already was described in TDCJ medical records as being fragile  
12 or traumatized by his earlier assaults, that to put him in that  
13 kind of a situation certainly wasn't taking into consideration  
14 his protection needs.

15 Q. Well, do you think it was unreasonable to put him in that  
16 cell?

17 A. I think it's unreasonable.

18 Q. And -- now, is -- what about the use of gas to remove him



19 from his cell? Is that a practice that's appropriate in

20 corrections?

21 A. It certainly is not inappropriate. I think the use of gas

22 in corrections in a variety of situations is an appropriate

23 response to removal.

24 Q. And in this -- in this situation, was gas appropriate?

25 A. I wasn't able to judge that. I don't know the situation.

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 It was not well described as to the degree to which he was  
2 refusing. The concern I would have around the particular  
3 situation is, it did not seem that there was -- there was no  
4 recording of anyone making an attempt to find out clearly why he  
5 wanted -- why he was refusing. It's not very often that inmates  
6 choose to stay in solitary confinement. Refusing to leave  
7 solitary confinement is even rarer. There should have been, I  
8 think, lengthy discussion by someone and probably by somebody  
9 from the mental health department to determine if indeed he  
10 should be moved or not.

11 Q. But in your opinion, in his case, the -- was there an  
12 obvious risk that he would be harmed by putting him in the  
13 living situation that they were forcing him to move into?

14 A. Judging by his past and judging by his youth and judging by  
15 his physical fragility, I would say that one should have made  
16 the determination that there was some risk associated with  
17 putting him into a cell with another person in a closed custody  
18 setting unless the -- that other cell mate was closely assessed

19 as to not being a threat.

20 Q. And you said that he ended up living in administrative

21 segregation?

22 A. Yes.

23 Q. And what is your opinion of that as a housing solution to

24 his problems?

25 A. Well, ironically, it finally served his purpose. He, at

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

800

1 that point in time, was not placed in administrative segregation  
2 for protective custody purposes. He was placed in there as a  
3 result of his behaviors over time. Nevertheless, it did then  
4 afford him a degree of protection.

5 Q. I understand in his case it at least kept him isolated from  
6 predators. Is that a systemic response to this problem? Is  
7 that appropriate?

8 A. I'm sorry, I didn't understand.

9 Q. Well, is it appropriate to have a system that a person can  
10 only get protection from harm by ending up in administrative  
11 segregation?

12 A. I do not think that is appropriate. I think it's the  
13 responsibility of corrections professionals to pay attention to  
14 the safety needs. Inmates in a prison are people who can do  
15 very little for themselves, very little legitimately. And it's  
16 the responsibility of corrections officials, whether requested  
17 or not by the inmate, to pay the utmost attention to safety  
18 needs.

19 Q. Are there other examples you have of prisoners for whom  
20 there seem to be a reasonable risk of harm that was being  
21 ignored?

22 A. There was a Inmate E -- I might add that we ran into --

23 THE COURT: Before we proceed to that prisoner, I  
24 noted that you mentioned that this prisoner or inmate had been  
25 in isolation for some 90 days?

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 THE WITNESS: Yes, sir.

2 THE COURT: What effect, if you know, in your field of  
3 expertise, is that likely to have upon his mental condition?

4 THE WITNESS: It's somewhat ironic, Your Honor, in  
5 that I tried to address that specific question as I looked at  
6 this booming use of super max prisons across the country in this  
7 monograph that I did work for. There's not a lot of detailed  
8 research out there in terms of the impact. However, I believe  
9 that my opinion is, and I believe that it's supported by many,  
10 many people, not only in the corrections profession, but in the  
11 field of psychology and psychiatry, that the severe deprivation  
12 of people for extended periods of time will cause people with a  
13 predisposition for mental illness to more likely experience  
14 mental illness, and for those that may not have that  
15 predisposition, to still disassociate from what we would call  
16 normal living. There's a very interesting study that happened  
17 in Stanford back in the '60s where they did trials with college  
18 students, and they had to call the experiment off because of the

19 severe conditions that the students were exposed to were making  
20 them behave very strangely.

21 Having said that, I would once again state that I know  
22 of no definitive research. It's something that --

23 THE COURT: Well, I remember reading in the history of  
24 prisons that the Quakers, in their efforts to reform prisoners,  
25 kept them in isolation for years at a time and that they almost

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 uniformly went insane. And that's the reason I was inquiring of  
2 you.

3 THE WITNESS: I suspect that if -- that what we will  
4 find when adequate research is done is that that type of thing  
5 exactly is what we're going to find, is my opinion.

6 THE COURT: All right. Go ahead with your next  
7 question.

8 BY MS. SALITERMAN:

9 Q. Were you able to observe any ill effects on this prisoner  
10 as a result of his time in isolation and the other harm that he  
11 suffered?

12 A. He -- at the time that I interviewed him, he was a very  
13 withdrawn individual. I guess I wouldn't rely as much on that  
14 as being -- as his solitary time or administration time as being  
15 the caused effect, or I don't know that. What we do know from  
16 TDCJ's medical records is that he, in their opinion, suffered  
17 from posttraumatic syndrome kinds of behaviors. Now, whether  
18 that is a result of solitary in ad seg and the trauma he had



19 been through the assaults, or combinations of all three,

20 probably.

21 Q. And that conclusion is in the medical records you reviewed?

22 A. Yes.

23 MS. SALITERMAN: I'd like to move into admission the

24 exhibits that you have, which are -- if you would read them,

25 please?

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 THE WITNESS: 554 and 555.

2 MR. YOUNG: No objection to either one of them.

3 THE COURT: Very well. They are admitted.

4 BY MS. SALITERMAN:

5 Q. In addition to the ill effects, perhaps, on his own  
6 well-being, in the Texas system, what are the effects of moving  
7 from a minimum custody to medium to closed to ad seg in terms of  
8 your ability to earn good time, your reduction in class, and so  
9 on?

10 A. Well, in administration segregation in Texas, an individual  
11 does not earn good time at all. And that would be true also,  
12 obviously, of solitary. In fact, solitary typically is a  
13 punishment that accompanies, in many instances, the removal or  
14 taking away of good time.

15 Generally, people in the non-ad seg and nonsolitary  
16 level generally are eligible to earn good time unless they have  
17 taken away what is called -- or they have been placed in Line 3,  
18 which is a limitation on good time. My experience is that

19 enormous amounts of good time are taken away in Texas for  
20 punitive reasons.

21 Q. And in his case, by moving to ad seg, he was harmed in  
22 terms of his ability to earn good time?

23 A. He would not earn -- he would not then earn good time, that  
24 is correct.

25 Q. And as a result of not earning good time, you stay in

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 prison longer; is that right?

2 A. That is -- that is correct.

3 Q. Do you have other examples which show the inadequate  
4 practices in Texas causing serious harm to prisoners?

5 A. There was a gentleman by the name of Inmate GG, 503719. In  
6 March of '98 he was involved in some self-destructive behavior.  
7 He was cutting on his wrists. And in September he complained of  
8 a sexual assault by another inmate, saying that it occurred on  
9 the 3rd of September, 1998.

10 The medical records confirm that upon examination,  
11 that he had been anally penetrated and had another interesting  
12 comment that -- I'm not sure where it fits, called him a cured  
13 schizophrenic.

14 THE COURT: I didn't hear that. Schizophrenic, but --

15 THE WITNESS: Called him a cured.

16 THE COURT: Cured.

17 THE WITNESS: Cured schizophrenic.

18 He maintained on November 10th that the Gang 4 and the

19 Gang 3 had been after him since his arrival at Beto in 1989, and  
20 that when he arrived at Beto Unit in 1989 he had been beaten and  
21 raped there, and that he gave up the names of the people that  
22 assaulted him there, and that subsequently, no matter where he  
23 would be, that the -- he would carry, in quotes, snitch jacket  
24 along with him, and that put him at risk.

25 He was refused safekeeping on several occasions in

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 there. And then in an attempt of March 1998, he began refusing  
2 housing and went through much of the same pattern of the prior  
3 inmate that I talked about, but finally, by refusing housing,  
4 ended up in administrative segregation where, albeit once again,  
5 he would not be earning good time, but at least got himself into  
6 a -- into a safe situation.

7 Q. Well, earlier you gave an example where you thought on its  
8 appearance it was inadequate protection because the inmate  
9 seemed weak. Do I understand you that in Mr. Williams' case,  
10 the TDC system had actual knowledge that harm had happened to  
11 him?

12 A. It was documented in his medical file that the 1989 assault  
13 did occur. It -- and the medical records also indicate that he  
14 had been anally penetrated.

15 Q. And yet TDC did nothing to provide him with additional  
16 protection?

17 A. That is correct.

18 MS. SALITERMAN: If I may have a moment, Your Honor?

19 THE COURT: Yes.

20 BY MS. SALITERMAN:

21 Q. I believe the -- you reviewed medical records and other TDC  
22 records on Inmate GG?

23 A. I did.

24 MS. SALITERMAN: And Your Honor, I think those are  
25 already before the Court and been admitted as exhibits.

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 THE COURT: I'm sorry, ma'am?

2 MS. SALITERMAN: I think they have already been  
3 admitted as exhibits.

4 THE COURT: Yes.

5 MS. SALITERMAN: The chart, the Plaintiffs' Exhibits  
6 664 to 674, for the record.

7 BY MS. SALITERMAN:

8 Q. In reviewing your records, did you find evidence within the  
9 documents that TDC had knowledge of some of the harms that were  
10 happening to prisoners and yet took no action?

11 A. That is correct.

12 Q. And this is -- this is not just medical records, but in  
13 other TDC records?

14 A. I think it was not uncommon to find a request for  
15 safekeeping, and that at the -- generally at the unit

16 classification level, there was a denial. Now, in some

17 instances those denials are probably quite appropriate. I think

18 there are many instances, however, where a more thorough



19 investigation, or an investigation, in some instances - in some  
20 instances, the investigation did not occur - but at a minimum a  
21 more thorough investigation to assure that safety would be  
22 provided.

23 Q. And do you have any other examples you'd like to discuss of  
24 this failure to provide inadequate investigation?

25 A. Yes. Lest we think that violence is a male gender thing, I

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

807

1 did interview a woman by the name of Deanna Garcia at Hobby  
2 Unit. Deanna's number is 816332. She indicated that she had  
3 been assaulted on two different occasions by the same inmate,  
4 went to the infirmary each time, and each time the perpetrator  
5 was released. She was -- she requested protection and was told  
6 to fight back on each occasion. She was moved to another  
7 building, but a week later the same perpetrator, after two prior  
8 assaults, was moved right next door to her. And she at the time  
9 told me that she was still afraid at the time but was going home  
10 in the following week, and so she thought she could make it  
11 through till then.

12 The medical records did verify the fact that she -- of  
13 the two beatings and did verify, I might add, in the unit files  
14 that the perpetrator was moved next door to her a week after the  
15 second beating.

16 Q. And did you confirm the problems that happened to her in  
17 her records as well?

18 A. I did.

012515

19 Q. Now, did you find any documents that had confirmed some --  
20 well, let's talk about rape. You've been talking about specific  
21 cases in which there seems to be evidence that people are raped  
22 and it's allowed to go on in the system. Did you see any --  
23 besides these individual cases, did you see any documents or  
24 evidence that suggested that there was an attitude in TDC to  
25 allow this to happen?

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 A. We did review some statistics that TDCJ itself produces  
2 regarding the number of sexual assaults, forcible sexual  
3 assaults, recorded during, I believe -- I don't have that  
4 document with me. I believe it was in 1998. And it was, I  
5 thought, a --

6 Q. If you'll allow me, I'll bring you the Plaintiffs' exhibit  
7 that will show this. Let me show you, Mr. Riveland, what was  
8 marked as Plaintiffs' Exhibits 7, 8, 9, and 10. And with regard  
9 to Plaintiffs' Exhibit 7, which is entitled Alleged Sexual  
10 Assaults by Unit -- and I think you'll notice on the last two  
11 pages of the exhibit, this is information that was provided in  
12 response to interrogatories by Plaintiffs?

13 A. That is correct.

14 Q. And you had a chance to look at that document?

15 A. I have.

16 Q. And on the second -- third page, it gives the yearly totals  
17 of -- excuse me -- alleged sexual assaults by unit. And if you  
18 would read for the Court's information the figures for 1993

19 through 1998?

20 A. The document suggests that in 1993, there were 73 alleged

21 sexual assaults total, TDCJ. In 1994, 82. In 1985, 131. In

22 1986 (sic), 83. In 1980 -- '97, 87. In 1998, 81.

23 Q. And by alleged sexual assaults, what do you understand this

24 totals?

25 A. My understanding is, that are -- those are the sexual

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 assaults reported by the inmates but not necessarily confirmed  
2 through investigation.

3 Q. And did you -- did you receive any information that  
4 described the policy and practice in TDC of what happens when a  
5 prisoner -- or what's supposed to happen when a prisoner makes a  
6 claim of sexual assault?

7 A. Yes.

8 Q. And maybe I can direct your attention to Plaintiffs' 8 and  
9 9. And 8 is a May 19, 1997 letter from Debbie Miller, Executive  
10 Services of TDCJ, to Joanne Mariner, Human Rights Watch. And 9  
11 is the June 29, 1998 letter from Debbie Miller to Joanne  
12 Mariner. Do you see those?

13 A. I do.

14 Q. Okay. And if I could direct your attention to the fourth  
15 paragraph on Plaintiffs' 8, it -- well, perhaps it's paragraphs  
16 3 and 4. And maybe you could tell the Court what TDC's policies  
17 and practices are supposed to be with regard to the reporting of  
18 rapes.

19 A. The author of the letter, Ms. Debbie Miller from TDCJ  
20 Executive Services, suggests that once an offender reports  
21 having been raped, the immediate response is to direct him to  
22 the medical clinic -- direct him to the medical clinic. There  
23 he is examined by a doctor, who administers a rape kit if the  
24 incident occurred within 12 hours. A referral is then made to  
25 psychiatric services to offer the victim therapeutic counseling.

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 Meanwhile, the classification department is notified of the  
2 reported rape, and they issue a request to security for  
3 investigation. Facts of the incident are collected, including  
4 the time and location of the incident, the name of attackers,  
5 name of witnesses. If confirmation exists to presume a rape did  
6 occur, the victim is segregated from the other population. The  
7 investigative report is reviewed by the classification staff  
8 based on whether or not the allegations are considered founded.  
9 The department makes a recommendation for the victim's transfer  
10 to another unit and/or placement in safekeeping housing or has  
11 the claimant return to his housing assignment to resume regular  
12 duties. Then it goes on to say that the Internal Affairs  
13 Department is also notified, and elaborates on details regarding  
14 their activities.

15 Q. Well, taking it step by step, from your review of cases and  
16 documents within TDC, did you find that these steps were being  
17 followed, that is, the classification department would be  
18 notified of reported rapes?



19 A. I found, first of all, in almost a crescendoing order that  
20 in many instances a rape reported to line staff was not reported  
21 anywhere else at all. Secondly, that many individuals who claim  
22 to have been raped were not referred to the medical department.  
23 And that in some instances when they're referred to the medical  
24 department, that the rape kit was not applied, even though the  
25 allegation was that the rape had occurred within 12 hours.

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

811

1 Q. And were -- did you find any examples in which there was an  
2 investigative report that was reviewed by the classification  
3 staff?

4 A. I don't recall such a report.

5 Q. And did you see any information that the Internal Affairs  
6 Department was notified of these alleged rapes?

7 A. I don't recall anything I have seen that would suggest  
8 that.

9 Q. Now, I had you read the data on rape that was in  
10 Plaintiffs' 7 which showed in 1997, in terms of alleged raped,  
11 they had 87; right?

12 A. That is correct.

13 Q. Now, if you look at the report by Ms. Miller to Joanne  
14 Mariner, in the last paragraph, approximately -- can you just  
15 read that in terms of the number of rapes and -- or sexual  
16 assault cases that have been investigated, not just alleged, but  
17 investigated -- alleged and investigated that occurred each  
18 year? Do you see that on that Exhibit 8?

19 A. I do. It suggests -- it states in the final paragraph,  
20 Over the past four years, an average of 110 offender sexual  
21 assault cases have been investigated annually. Since 1984,  
22 Internal Affairs has investigated a total of 519 cases of this  
23 nature. Four cases have resulted in prosecution, with the  
24 guilty party receiving an additional prison sentence.  
25 Q. But from your observation, most sexual assaults are either

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 never reported, or if reported, there's not a rape test, and

2 that there's no ongoing reporting to the Internal Affairs

3 Division; is that right?

4 A. That is correct. Assuming that these figures are accurate,

5 I find it astonishing that in a -- in a correctional system the

6 size of TDCJ that, for example, there would only be 81 alleged

7 sexual assaults in 1998. That's a decrease -- despite the

8 population rising to over 140,000 inmates, a decrease from 1997,

9 when there were only 87.

10 Q. And does that underreporting of alleged sexual assaults

11 support your opinion that TDC is failing to reasonably protect

12 prisoners from serious risk of harm?

13 A. Given the nature of prison life, I think that's, again, an

14 astonishingly low number of alleged sexual assaults, given their

15 population. And I think certainly is indicative that something

16 is awry systemically, that the number of alleged assaults at

17 least isn't proportionate to their population, the correctional

18 population.

19 Q. Does it suggest that there is a systemic toleration of  
20 sexual assault?

21 A. I don't know if it's toleration or if it's a failure to  
22 simply follow the policies and procedures that they have in  
23 place. I quite honestly would feel more firmly and grounded in  
24 the second of the two.

25 Q. Thank you. Now, if you look at Plaintiffs' Exhibit 9,

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 there is a more firm number in terms of the number of offender  
2 sexual assault cases that were reported. Do you see that in the  
3 first paragraph of Exhibit 9, June 29, 1998?

4 A. I do.

5 Q. Okay. Would you just give those numbers and then give half  
6 of the year of '98; right?

7 A. It states in this letter that I am providing the number of  
8 reported cases of inmate on inmate rape and sexual assaults in  
9 our system. In the year 1997, approximately 123 offender sexual  
10 assault cases were reported. From January 1 to June 1, 1998, 59  
11 cases have been reported.

12 Q. So at least it appears, doesn't it, that the figures went  
13 up from alleged assaults of 87 in 1997 to 110 investigated and  
14 now we've got 123 offender sexual assault cases being reported;  
15 is that right?

16 A. The two pieces of data seem to be inconsistent.

17 Q. Let me direct your attention next to Exhibit 10,  
18 Plaintiffs' Exhibit 10, which are disciplinary code totals for

19 sexual assault. Did you come to understand in your visits in

20 TDCJ prisons that there is a disciplinary code for sexual

21 assault?

22 A. I did.

23 Q. And that's code 7?

24 A. That's right.

25 Q. And this compilation, which I report is based on TDC

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998

1 documents, gives the year and the population and then the number  
2 of prisoners who were disciplined, therefore found guilty for  
3 sexual assault. And would you tell the Court what -- how many  
4 prisoners were disciplined for sexual assault in 1997?

5 A. The report would suggest in 1997 that there were five  
6 prisoners that were disciplined for code 7.

7 Q. And how many in 1998?

8 A. The number for 1998 is stated as six.

9 Q. And what is your opinion of those numbers?

10 A. I would find that number to be low if I were looking at a  
11 single unit, let alone an entire system.

12 Q. And what do you think of that number in comparison to the  
13 number of cases investigated as reported in the other exhibits  
14 and what you know about the TDC disciplinary system?

15 A. I, first of all, find the numbers of alleged sexual  
16 assaults as stated in the TDCJ document to be astonishing. I  
17 find the number of disciplinary actions for a code 7 to be  
18 almost unbelievable. But -- and, again, I would reiterate that



19 I would find that to be an astonishingly low number for one

20 single prison anywhere.

21 Q. Now, rape is, you know, the most extreme assault, some

22 people would argue, isn't that correct?

23 A. It certainly is a very serious type of assault.

24 Q. Let me put it this way: Do you think this underreporting

25 in rape cases is indicative of the underreporting of prisoner on

KATHY CARROLL, OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT (512) 236-0998